



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

January 12, 2024

Steven R. Peikin  
Alexander J. Willscher  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004  
*Counsel for Morgan Stanley & Co. LLC*

**Re: Non-Prosecution Agreement with Morgan Stanley & Co. LLC**

Dear Counsel:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will not criminally prosecute Morgan Stanley & Co. LLC ("Morgan Stanley" or the "Firm"), or its parent, subsidiaries, and affiliates for any crimes (except for criminal tax violations, as to which this Office cannot and does not make any agreement) related to the making, by two former Morgan Stanley employees, of untrue statements of material fact to certain individuals and companies that wished to sell large equity blocks to Morgan Stanley ("block trades"), namely, agreeing with, or representing to, the potential sellers that Morgan Stanley would keep information concerning their potential sales confidential, knowing that the two former Morgan Stanley employees would disclose certain of that information to prospective buyers of the securities, and that the prospective buyers would use the information to trade in advance of the block sales, during the period from approximately 2018 to August 2021. This conduct is described more fully in the Statement of Facts attached hereto as Exhibit A and incorporated herein by reference.

Morgan Stanley admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, employees, and agents as set forth in the Statement of Facts, and that the facts described in the Statement of Facts are true and accurate.

**Term of the Agreement**

This Agreement is effective for a period beginning on the date on which it is signed and ending three years from that date (the "Term"). Morgan Stanley agrees, however, that, in the event the United States determines, in its sole discretion, that Morgan Stanley has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of Morgan Stanley's obligations under this Agreement, an extension or extensions of the Term may be imposed by the United States, in its sole discretion, for up to a total additional time period of one year, without prejudice to the right of the United States to proceed as provided below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period.

**Relevant Considerations**

The United States enters into this Agreement based on the individual facts and circumstances presented by this case and Morgan Stanley, including:

a. Morgan Stanley did not receive voluntary disclosure credit pursuant to the FCPA Corporate Enforcement Policy in the Department of Justice Manual 9-47.120, or pursuant to the United States Sentencing Guidelines (“Sentencing Guidelines”), because it did not voluntarily disclose to the United States the conduct described in the Statement of Facts attached hereto as Attachment A;

b. Morgan Stanley received full credit for its extensive cooperation with the United States’ independent investigation, which has included: conducting an internal investigation, voluntarily making employees available for interviews, and collecting, analyzing, and organizing voluminous evidence and information for this Office;

c. Morgan Stanley engaged in, and continues to engage in, extensive remedial efforts, including its discipline and termination of employees, and its enhancement of its compliance and ethics program designed to prevent and detect violations of securities fraud statutes and/or applicable anti-fraud laws;

d. Morgan Stanley has agreed to continue to cooperate with this Office in this and any related matters;

e. the nature and seriousness of the offense conduct, as set forth in the Statement of Facts, the seniority of the individuals involved, and the duration of the conduct;

f. Morgan Stanley has agreed to accept full responsibility for its conduct and resolve with the U.S. Securities and Exchange Commission (the “SEC”) through an administrative Order Instituting Proceedings that will become effective on January 12, 2024, relating to conduct described in the Statement of Facts, and has agreed to pay \$138,297,046 in disgorgement and pre-judgment interest of \$28,057,775;

g. Morgan Stanley has no prior criminal history; and

h. Morgan Stanley has agreed to continue to cooperate with the United States in any ongoing investigation as described below.

Accordingly, after considering (a) through (h) above, the United States believes that the appropriate resolution in this case is a non-prosecution agreement with Morgan Stanley; a criminal monetary penalty of \$16,900,000, which reflects an aggregate discount of thirty-five (35) percent off the bottom of the otherwise-applicable United States Sentencing Guidelines fine range; and Morgan Stanley’s agreement to report to the United States as set forth in the Agreement.

### **Future Cooperation and Disclosure Requirements**

Morgan Stanley shall cooperate fully with the United States in any and all matters relating to the conduct described in this Agreement and the Statement of Facts at any time during the Term until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the Term. At the request of the United States, Morgan Stanley shall also cooperate fully with other domestic or foreign law enforcement, regulatory authorities, and agencies in any investigation of Morgan Stanley or its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the Statement of Facts and any other conduct under investigation by this Office at any time during the Term. Morgan Stanley's cooperation pursuant to this Paragraph is subject to applicable laws and regulations, including relevant data privacy and national security laws, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, Morgan Stanley must provide to the United States a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and Morgan Stanley bears the burden of establishing the validity of any such an assertion. Morgan Stanley agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. Morgan Stanley shall truthfully disclose all factual information about which Morgan Stanley has any knowledge related to (i) the conduct described in the Statement of Facts, (ii) any conduct disclosed by Morgan Stanley pursuant to this Agreement, and (iii) any other matter about which this Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of Morgan Stanley to provide to this Office, upon request, any document, record, or other tangible evidence about which the United States may inquire of Morgan Stanley.

b. Morgan Stanley shall promptly bring to this Office's attention any evidence of a criminal violation of U.S. federal law or any violation of the anti-fraud provisions of the United States securities laws by Morgan Stanley, its present and former directors, officers, employees, and agents acting within the scope of their role.

c. Upon request of the United States, Morgan Stanley shall designate knowledgeable employees, agents, or attorneys to provide to the United States the information and materials described in Paragraph (a) above on behalf of Morgan Stanley. It is further understood that Morgan Stanley must at all times provide complete, truthful, and accurate information.

d. Morgan Stanley shall use its best efforts to make available for interviews or testimony, as requested by the United States, present or former officers, directors, employees, agents, and consultants of Morgan Stanley. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of Morgan Stanley, may have material information regarding the matters under investigation.

e. With respect to any information, testimony, documents, records, or other tangible evidence provided to the United States pursuant to this Agreement, Morgan Stanley consents to

any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government, of such materials as the United States, in its sole discretion, shall deem appropriate.

### **Financial Obligations**

As a result of the conduct described in the Statement of Facts, Morgan Stanley agrees to make payments in total of \$153,431,223 to the United States (the “Total Financial Payment”). Specifically, Morgan Stanley agrees to make a payment of restitution for the benefit of certain block sellers in the amount of \$64,016,082; forfeit \$72,515,141; and pay a fine of \$16,900,000 to the United States, as set forth below.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate that Guidelines provisions in effect as of November 1, 2023, apply to this case. Morgan Stanley further stipulates that the Government’s Guidelines calculations, set forth below, shall be used to calculate the applicable Guidelines Range in connection with sentencing and further agrees not to contest such Guidelines calculations.

1. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7.
2. Pursuant to U.S.S.G. § 2B1.1(b)(1)(L), 22 levels are added because the loss resulting from the offense is more than \$25 million and less than or equal to \$65 million.
3. Pursuant to U.S.S.G. § 2B1.1(b)(10)(C), 2 levels are added because the offense involved sophisticated means and Morgan Stanley intentionally engaged in or caused the conduct constituting sophisticated means.
4. Pursuant to U.S.S.G. § 2B1.1(b)(20)(A)(iii), 4 levels are added because the offense involved a violation of securities law and, at the time of the offense, Morgan Stanley was an investment adviser, or a person associated with an investment adviser.
5. Accordingly, the total offense level pursuant to U.S.S.G. § 2B1.1 is 35.
6. Pursuant to U.S.S.G. § 8C2.4(a)(1), the base fine is the amount from the table in § 8C2.4(d) that corresponds to an offense level of 35, which is \$65 million.

### **Culpability Score and Fine Range**

1. Pursuant to U.S.S.G. § 8C2.5(a), the culpability score starts with 5 points.
2. Pursuant to U.S.S.G. § 8C2.5(b)(4), 2 points are added because the organization had 50 or more employees and an individual within substantial authority personnel of the organization participated in, condoned, or was willfully ignorant of the offense.

3. Pursuant to U.S.S.G. § 8C2.5(f)(1), 3 points are subtracted because the offense occurred even though the organization had in place at the time of the offense an effective compliance and ethics program.
4. Pursuant to U.S.S.G. § 8C2.5(g)(2), 2 points are subtracted because the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.
5. Accordingly, the culpability score is 2.
6. Pursuant to U.S.S.G. § 8C2.6, with a culpability score of 2, the fine multiplier is 0.40 to 0.80 times the base fine, to wit, \$26 million to \$52 million.

In consideration of all the factors under the Sentencing Guidelines, Section 8C2.8(a), and Title 18, United States Code, Section 3553(a), and after considering the individual facts and circumstances presented by this case, the parties agree that Morgan Stanley should receive a discount of thirty-five (35) percent off of the bottom of the otherwise-applicable Sentencing Guidelines fine range for the conduct described in the Statement of Facts. This results in an agreed-upon fine amount of \$16,900,000. This Office agrees to credit against the fine amount the civil monetary penalty to be paid by Morgan Stanley to the SEC in connection with Morgan Stanley's parallel resolution with the SEC.

Morgan Stanley agrees to pay the Total Financial Payment to the United States Treasury no later than ten (10) business days after the Agreement is fully executed. The Total Financial Payment is final and shall not be refunded. Morgan Stanley acknowledges that no tax deduction may be sought in connection with the payment of the forfeiture or fine components of the Total Financial Payment. Morgan Stanley shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that Morgan Stanley pays pursuant to this Agreement or any other agreement entered into with an enforcement authority or regulator, including the SEC, concerning the facts set forth in the Statement of Facts.

#### **Conditional Release from Liability**

The United States agrees, except as provided in this Agreement, that it will not bring any criminal or civil case against Morgan Stanley or any of its direct or indirect affiliates, subsidiaries, or joint ventures relating to any of the conduct described in the Statement of Facts. This Agreement does not provide any protection against prosecution for any future conduct by Morgan Stanley or any of its direct or indirect affiliates, subsidiaries, or joint ventures. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with Morgan Stanley.

#### **Breach of the Agreement**

If, during the Term, Morgan Stanley (a) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (b) fails to cooperate as set forth in this

Agreement; (c) otherwise fails to completely perform or fulfill each of Morgan Stanley's obligations under the Agreement; or (d) anyone working within Morgan Stanley's Equity Capital Markets Group commits any felony under U.S. federal law or any violation of the anti-fraud provisions of the United States securities laws, regardless of whether the United States becomes aware of such a breach after the Term is complete, Morgan Stanley shall thereafter be subject to prosecution for any federal criminal violation of which the United States has knowledge, which may be pursued by the United States in the U.S. District Court for the Southern District of New York or any other appropriate venue. Determination of whether Morgan Stanley has breached the Agreement and whether to pursue prosecution of Morgan Stanley shall be in the United States' sole discretion. Any such prosecution may be premised on information provided by Morgan Stanley or its personnel. Any such prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the United States prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Morgan Stanley, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, Morgan Stanley agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, Morgan Stanley agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the United States is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

In the event the United States determines that Morgan Stanley has breached this Agreement, the United States agrees to provide Morgan Stanley with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, Morgan Stanley shall have the opportunity to respond to the United States in writing to explain the nature and circumstances of such breach, as well as the actions Morgan Stanley has taken to address and remediate the situation, which explanation the United States shall consider in determining whether to pursue prosecution of Morgan Stanley.

In the event that the United States determines that Morgan Stanley has breached this Agreement: (a) all statements made by or on behalf of Morgan Stanley to the United States or to the Court, including the Statement of Facts, and any testimony given by Morgan Stanley before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the United States against Morgan Stanley; and (b) Morgan Stanley shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of Morgan Stanley prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, Morgan Stanley, will be imputed to Morgan Stanley for the purpose of determining whether Morgan Stanley has violated any provision of this Agreement shall be in the sole discretion of the United States.

Morgan Stanley acknowledges that the United States has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if Morgan Stanley breaches this Agreement and this matter proceeds to judgment. Morgan Stanley further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

On the date that the Term specified in this Agreement expires, Morgan Stanley, by the Chief Executive Officer of Morgan Stanley, will certify to the United States that Morgan Stanley has met its disclosure obligations pursuant to this Agreement. Each certification will be deemed a material statement and representation by Morgan Stanley to the executive branch of the United States for purposes of Title 18, United States Code, Sections 1001 and 1519, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

### **Sale, Merger, or Other Change in Corporate Form of Company**

Except as may otherwise be agreed by the parties in connection with a particular transaction, Morgan Stanley agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to Morgan Stanley's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the Statement of Facts, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the United States' ability to enforce a breach under this Agreement is applicable in full force to that entity. Morgan Stanley agrees that the failure to include these provisions in the transaction will make any such transaction null and void. Morgan Stanley shall provide notice to the United States at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The United States shall notify Morgan Stanley prior to such transaction (or series of transactions) if the United States determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If at any time during the Term Morgan Stanley engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the United States may deem it a breach of this Agreement pursuant to Paragraphs 14 through 18 of this Agreement. Nothing herein shall restrict Morgan Stanley from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the United States.

### **Public Statements by Morgan Stanley**

Morgan Stanley expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for Morgan Stanley, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility

by Morgan Stanley set forth above or the facts described in the Statement of Facts. Any such contradictory statement shall, subject to cure rights of Morgan Stanley described below, constitute a breach of this Agreement, and Morgan Stanley thereafter shall be subject to prosecution as set forth in this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to Morgan Stanley for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the United States. If the United States determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the United States shall so notify Morgan Stanley, and Morgan Stanley may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. Morgan Stanley shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of Morgan Stanley in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of Morgan Stanley.

Morgan Stanley agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, Morgan Stanley shall first consult with the United States to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the United States and Morgan Stanley; and (b) whether the United States has any objection to the release.

The United States agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of Morgan Stanley's cooperation and remediation. By agreeing to provide this information to such authorities, the United States is not agreeing to advocate on behalf of Morgan Stanley, but rather is agreeing to provide facts to be evaluated independently by such authorities.

#### **Limitations on Binding Effect of Agreement**

This Agreement is binding on Morgan Stanley and this Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the United States will bring the cooperation of Morgan Stanley and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by Morgan Stanley.

#### **Complete Agreement**

This Agreement, including its attachments, sets forth all the terms of the agreement between Morgan Stanley and the United States. No amendments, modifications, or additions to

this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for Morgan Stanley, and a duly authorized representative of Morgan Stanley.

This Agreement may be executed in one or more counterparts, including by scanning, faxing, photocopying, or similarly reproducing a copy of an original document containing original handwritten signature of the executing party, each of which shall be considered effective as an original signature.

Very truly yours,

DAMIAN WILLIAMS  
United States Attorney

By:   
\_\_\_\_\_  
Margaret Graham  
Samuel P. Rothschild  
Justin Rodriguez  
Assistant United States Attorneys

APPROVED:

  
\_\_\_\_\_  
Andrea Griswold  
Deputy United States Attorney

AGREED AND CONSENTED TO:

\_\_\_\_\_  
Eric Grossman  
Chief Legal Officer, Morgan Stanley & Co. LLC

\_\_\_\_\_  
DATE

APPROVED:

\_\_\_\_\_  
Steven R. Peikin, Esq.  
Alexander J. Willscher, Esq.  
Sullivan & Cromwell LLP

\_\_\_\_\_  
DATE

this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for Morgan Stanley, and a duly authorized representative of Morgan Stanley.

This Agreement may be executed in one or more counterparts, including by scanning, faxing, photocopying, or similarly reproducing a copy of an original document containing original handwritten signature of the executing party, each of which shall be considered effective as an original signature.

Very truly yours,

DAMIAN WILLIAMS  
United States Attorney

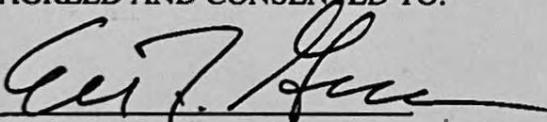
By:

\_\_\_\_\_  
Margaret Graham  
Samuel P. Rothschild  
Justin Rodriguez  
Assistant United States Attorneys

APPROVED:

\_\_\_\_\_  
Andrea Griswold  
Deputy United States Attorney

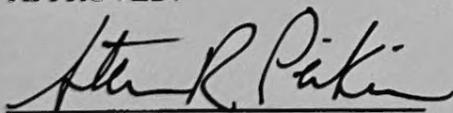
AGREED AND CONSENTED TO:



Eric F. Grossman  
Chief Legal Officer, Morgan Stanley  
On behalf of Morgan Stanley & Co. LLC

January 11, 2024  
\_\_\_\_\_  
DATE

APPROVED:



Steven R. Peikin, Esq.  
Alexander J. Willscher, Esq.  
Sullivan & Cromwell LLP

1/11/2024  
\_\_\_\_\_  
DATE